



(Billing Code 7510-13)

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1843 and 1852**

**RIN 2700-AE44**

**NASA Federal Acquisition Regulation Supplement: Removal of Reference to the Shared Savings Policy and Associated Clause (NFS Case 2018-N008)**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Direct final rule.

**SUMMARY:** NASA is issuing a final rule to amend the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to remove reference to the Shared Savings policy and associated clause.

**DATES:** This final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments due on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the Federal Register.

**ADDRESSES:** Submit comments identified by NFS Case 2018-N008, using any of the following methods:

- o Federal eRulemaking Portal: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "NFS Case 2018-N008". Select the link "Comment Now" that corresponds with "NFS Case 2018-N008". Follow the instructions

provided on the screen. Please include your name, company name (if any), and "NFS Case 2018-N008" on any uploaded files."

o E-mail: marilyn.seppi-1@nasa.gov. Include "NFS Case 2018-N008" in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Seppi, NASA Headquarters, Office of Procurement, Contract and Grant Policy Division, Suite 5H35, 300 E. Street SW, Washington, DC 20456-0001. Telephone 202-358-0447.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

NFS subpart 1843.71, Shared Savings, and associated clause 1852.243-71, Shared Savings, were added to the NFS in 1997. The intent of the clause was to provide an incentive for contractors to identify and implement significant cost reduction programs. In return, they would be eligible for a share of the realized savings which resulted from those cost-cutting projects once they were approved by the contracting officer. Pursuant to Executive Order 13563, Improving Regulation and Regulatory Review, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, NASA is continually reviewing existing regulations with the objective of reducing or removing any unnecessary, outdated and burdensome requirements that have outlived their intended purpose, NFS 1843.71, Shared Savings,

and associated clause 1852.243-71, Shared Savings were reviewed and recommended for removal from the NFS since they are duplicative of the FAR part 48, Value Engineering Change Proposal (VECP) program and associated clauses implemented under OMB Circular A-131, Value Engineering. The FAR VECP clauses provide the same incentive to contactors as the NFS Shared Savings clause.

NASA does not anticipate opposition to the changes or significant adverse comments. However, if the Agency receives significant adverse comment, it will withdraw this final rule by publishing a document in the Federal Register. A significant adverse comment is one that explains: (1) Why the final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the final rule will be ineffective or unacceptable without change. In determining whether a comment necessitates withdrawal of this final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

## **II. Publication of this final rule for public comment is not required by statute**

Publication of proposed regulations, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation (FAR). Paragraph (a)(1) of the statute

requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it makes nonsubstantive changes to Agency regulations that has minimal impact on contractors or offerors as there are value engineering proposal clauses prescribed in FAR part 48 that may be utilized in lieu of the NFS clause. The rule merely removes from the NFS policy and an associated clause that is outdated and redundant to policy that is already provided for in the FAR.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Executive Order 13371**

This rule is not subject to Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

#### **V. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant NFS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and therefore does not require publication for public comment.

#### **VI. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 1843 and 1852**

Government procurement.

**Geoffrey Sage,**

*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1843 and 1852 are amended as follows:

1. The authority citation for parts 1843 and 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

**PART 1843—CONTRACT MODIFICATIONS**

Subpart 1843.71 [Removed]

2. Remove subpart 1843.71, consisting of sections 1843.7101 and 1843.7102.

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1852.243-71 [Removed and Reserved]

3. Remove and reserve 1852.243-71.